IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2547 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?**-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

==========

KAMAL PLASTIC INDUSTRIES LTD. - Petitioner(s)
Versus
UTTAR GUJARAT VIJ CO. LTD. - Respondent(s)

==========

Appearance :

MR MEHUL H RATHOD for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR SN SINHA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/02/2007

ORAL JUDGMENT

1. Rule. The learned advocate for the respondent

waives service of Rule.

2. Kamal Plastic Industries Ltd., petitioner has filed this petition with a prayer that this Court may be pleased to issue a writ of certiorari or any other writ order or direction in nature of certiorari for quashing and setting aside the judgment and order dated 29/9/2006 passed by the learned Presiding Officer, Fast Track Court No.5, Palanpur in Civil Misc. Appeal No.88 of 2005 and the order dated 21/10/2005 passed below an application at Exh.5 of Regular Civil Suit No.270 of 2005 by the learned Civil Judge (SD), Palanpur with all consequential effects and further be pleased to grant interim injunction in terms of prayer 15(a) of Exh.5 application of Regular Civil Suit No.270 of 2005 till the final adjudication of Regular Civil Suit No.270 of 2005 by the learned Civil Judge (SD), Palanpur. The petitioner further prayed this Court that this Court may be pleased to direct the respondent reconnect the electricity supply to the petitioner forthwith on any condition that may be deemed fit and proper by

this Court. When the matter is placed for hearing before this Court, this Court has passed an order on 12/2/2007 and issued notice. Petition was filed on 26/12/2006.

3. The facts giving rise to this petition are as under:

3.1) The petitioner is a consumer, bearing connection no.I-1052 and Consumer No.70947/01066/1 of 70 H.P. for Plastic Industry at Chandisar GIDC, Palanpur.

3.2) It appears that Checking Officer had visited factory on 1/4/2005 and broke open the seal of meter and prepared a report bearing No. UGCL (GEB) PMN 5618, wherein it was stated that the meter is moving 44.27% slow on account of not getting one phase. It is mentioned in the report that the seals were intact at the time of checking. In the report the checking authority has instructed to issue additional bill to the petitioner in accordance with the Rules of slow moment of meter.

3.3) In view of the aforesaid, on 4/4/2005, the respondent company sent the additional bill for Rs.1,65,029.87 along with letter issued from Dantiwada office, bearing no.C.1654.

3.4) The respondent company thereafter on 30/6/2005 has sent another bill for Rs.26,211.48 towards difference of amount after 1/4/2005.

3.5) Petitioner thereafter, addressed a letter on 14/7/2005 to the Deputy Engineer, Uttar Gujarat Vij Company Ltd. to withdraw the bill issued by respondent company.

3.6) Being aggrieved and dissatisfied with the aforesaid action, the petitioner has filed Regular Civil Suit No.270 of 2005 for declaration and permanent injunction and prayed or declaring that the bills issued on 30/6/2005 and 4/7/2005 for Rs.1,65,028.87 and Rs.26,221.48 is illegal and without any authority and therefore, the respondent no.2 has no right to issue such bills to the

petitioner. The petitioner prayed for amending plaint and also Exh.5 Application seeking mandatory relief of reconnection.

3.7) The petitioner preferred application vide Exh.5 on 23/8/2005, in RCS No.270 of 2005 for interim injunction against disconnection. It appears that on the same date the electricity connection bearing Consumer No.I 1052 LA of the petitioner's factory was disconnected by the Dy. Engineer of respondent company.

3.8) The respondent company has filed its reply on 12/9/2005 in Regular Civil Suit No.270 of 2005 and the application for interim injunction.

3.9) During the pendency of the proceedings from 28/9/2005 to 19/1/2006, the petitioner has deposited Rs.31,263/- as per the following details:

Rs.8,378/- on 28/9/2005

Rs.7,635/- on 28/10/2005

Rs.7,675/- on 29/11/2005

Rs.7,575/- on 19/1/2006

3.10) Thereafter, the learned Civil Judge (SD), Palanpur by his order dated 21/10/2005, was pleased to reject the application below Exh.5.

3.11) Being aggrieved and dissatisfied with the same, on 17/11/2005, the petitioner has preferred application bearing Civil Misc. Application No.88 of 2005 before the learned District Judge, Banaskantha against the order passed by learned Civil Judge (SD) in Application below Exh.5 for interim injunction in RCS No.270 of 2005.

3.12) It appears that on 27/12/2005, the respondent corrected the supplementary bill of Rs.1,65,029.87 and issued letter (Annexure-G) intimating bill amount Rs.73,845/63. The respondent board has also stated that the petitioner has to pay other amount in this behalf.

3.13) Thereafter, the learned Presiding Officer, Fast Track Court No.5, Palanpur dismissed the

appeal preferred by the petitioner on 29/9/2006.

4. Being aggrieved and dissatisfied with the said judgment and order, petitioner has filed this petition on 26/12/2006. When the matter was placed for hearing before this Court, this Court has passed an order on 12/2/2007, 14/2/2007 and 20/2/2007. Pursuant to the notice issued by this Court, the respondent has also filed affidavit dated 21/2/2007.

5. On behalf of the petitioner, Mr.Mehul Rathod, learned advocate appears. He has stated that petitioner has paid about Rs.31,000/- without prejudice to the rights and contentions of the parties. He has further stated that since August 2005, the petitioner is without connection and this Court may direct the GEB to give power connection in this behalf and he has prepared to pay amount of bill as decided by the learned Trial Judge in this behalf.

6. On behalf of Board, Mr.S.N.Sinha, learned advocate

appears and he has strongly objected to the same. He has stated that the disputed amount has not been deposited by the petitioner till today and hence Section 53 of the Act is not applicable in this case. In fact the petitioner has failed and neglected to pay even regular bills and the total arrears against him stand at Rs.2,31,292.11 as on today; the two part of this amount being Rs.1,32,817.11 disputed for slowness and Rs.98,475.11 for regular minimum charges. He has further stated that checking on 1/4/2005 was done in presence of the representative of the petitioner who has duly signed the checking report without any protest. The learned Judge below has after making a judicial scrutiny of the record held that the checking was done in presence of the petitioner and held the petitioner was liable for suppression of facts and unfit for equity. The findings of the learned Judge below cannot be challenged in the writ jurisdiction of this Court as this is a disputed question of facts. The meter was checked in presence of the petitioner and the fact of slowness of the meter on account

of R-phase not available is brought out in the checking report, which has been signed by the petitioner's representative. The point at issue, whether R-phase was available or not, is yet to be decided in the Civil Suit pending before the learned Trial Court and cannot be raised in this writ petition before this Court.

7. The learned advocate for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of Bihar State Electricity Board and another v. Umi Special Steel Ltd. reported in (2000) 8 SCC 560 and another judgment in the case of Amar Amit Jalna Alloys (P) Ltd. v. Maharashtra State Electricity Board and others, reported in (2005) 13 SCC 126. He has also relied upon the Division Bench Judgment of this Court in the case of Kiran Industries, Mehsana v. Gujarat Electricity Board, Baroda and another reported in 1995 (2) GLH 1.

7.1) The learned advocate for the respondent stated that this is a matter under Article 227 of

the Constitution of India and the Court has very limited jurisdiction. Unless there is a jurisdictional error, the Court may not interfere at this stage.

8. In this case, as both the Courts below have already decided the matter and the petitioner has partly paid the amount and he has shown his readiness and willingness to pay the due amount.

9. Mr.Rathod, learned advocate states that however, the petitioner desires to have power connection in this behalf immediately. So, without adjudicating the merits of the matter, if the following order is passed, the same may be in the interest of justice.

9.1) This Court requests the learned Trial Court to hear and decide the Civil Suit No.270 of 2005 after hearing both the parties as expeditiously as possible but not later than 30/7/2007.

9.2) Mr.Mehul Rathod, learned advocate states

that after the Trial Court passed an order, whatever the amount is payable, the petitioner agrees and undertakes to pay the same. The petitioner will file undertaking within two weeks from the date of receipt of the writ of this order. He further states that without prejudice to the rights and contentions of the parties, the petitioner will pay the regular charges for which the respondent issues bill.

9.3) Till the matter is decided, the petitioner also agrees and undertakes not to alienate, transfer, encumber or create any third party right on the property namely factory in this behalf. The undertaking to be filed before the Trial Court within 15 days from the receipt of the writ.

9.4) The respondent is directed to provide electric power connection forthwith within two days after receipt of the writ of the order in this behalf.

9.5) The Trial Court will hear and decide the matter without being influenced by the order passed by this Court.

9.6) Mr.Mehul Rathod, learned advocate for the petitioner and Mr.Sinha, learned advocate for the respondent states that both the parties will co-operate with the proceedings before the Lower Court.

10. Rule discharged. Petition is disposed of accordingly.

(K.M.MEHTA, J.)

(ila)